

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

November 17, 2005

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, November 17, 2005, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Harold Warner Jr., Chair; Bill Johnson; Bob Aldrich; M.S. Mitchell; Morris K. Dunlap (Out @ 3:40); Don Anderson; Denise Sherman; Bud Hentzen and Hoyt Hillman (Out @ 3:41). Darrell Downing Vice-Chair; Ronald Marnell; Elizabeth Bishop; John W. McKay Jr. were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; David Barber, Advanced Plans Manager and Rose Simmering, Recording Secretary.

1. Approval of October 20, 2005, and November 3, 2005 meeting minutes.

MOTION: To approve the October 20, 2005 meeting minutes.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (9-0).

MOTION: To approve the November 3, 2005 meeting minutes.

MITCHELL moved, **ALDRICH** seconded the motion, and it carried (9-0).

❖ **SUBDIVISION ITEMS**

2. Consideration of Subdivision Committee recommendations from the meeting of November 10, 2005.

2-1. SUB 2005-77: Final Plat -- GREENWICH BUSINESS CENTER ADDITION, located on the east side of Greenwich Road and on the south side of 29th Street North.

NOTE: This site is located in the County adjoining Wichita's city limits and annexation is required. The site has been approved for two zone changes (ZON 2000-23 and ZON 2005-03) from SF-20, Single-Family Residential and RR, Rural Residential to LI, Limited Industrial. Two Protective Overlays (P-O #74 and P-O 155) were also approved for this site addressing uses, outside storage, setbacks, signage, and building height.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed.
- B. The applicant shall guarantee the extension of sanitary sewer main and laterals and City water main and laterals to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering requests a copy of the drainage plan. City Engineering requests an off-site drainage easement for the property located to the southwest, adjoining the Fairmont Addition due to its use as stormwater detention for this plat. A restrictive covenant shall be provided regarding ownership and maintenance responsibilities.**
- E. **Traffic Engineering requests the applicant provide a petition for the paving of 29th St. North. A continuous decel lane to all drives is needed along Greenwich.**
- F. The plat proposes three openings along Greenwich Road. The plat's text specifies that access control to 29th St. North will be in accordance with access management standards. **The access controls are approved.**
- G. **City Fire Department** requests a hydrant location map for review.
- H. **County Public Works** has required annexation of 29th St. to east side of the plat, and also Greenwich along the plat.
- I. The Applicant shall guarantee the paving of the proposed streets to the business/industrial street standard.
- J. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking

over those responsibilities.

- L. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- M. The applicant shall contact MAPD to discuss the need for an administrative adjustment to the Protective Overlay.
- N. A Protective-Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved P-O and its special conditions for development on this property.
- O. In accordance with the P-O approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- P. GIS has requested that the name "Carmine" be replaced.**
- Q. The right-of-way dimensions are needed at the major intersection.
- R. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City of Wichita.
- S. The applicant shall contact the pipeline company regarding street crossings.
- T. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- U. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- V. The MAPC signature block needs to reference "Harold L. Warner, Jr., Chair".
- W. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- X. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Y. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Z. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- AA. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- BB. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- CC. Perimeter closure computations shall be submitted with the final plat tracing.
- DD. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- EE. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- FF. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (9-0).

- 2-2. **SUB 2005-127: One-Step Final Plat -- WEINGARTNER ADDITION**, located west of Hydraulic and north of 63rd Street North.

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact **City Environmental Services** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. Municipal water services are available to serve the site.
- C. **City of Wichita Water and Sewer Department** requests a petition for future extension of sanitary sewer main and lateral.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- F. The preliminary plat needs to show owners of adjacent properties.
- G. The Applicant shall plat complete access control along 59th St. South. Access control shall be referenced in the plat's text.
- H. The MAPC signature block needs to reference "Harold L. Warner, Jr., Chair".
- I. **GIS** needs to comment on the plat's street names. **Street names are approved.**
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (9-0).

❖ **PUBLIC HEARINGS – VACATION ITEM**

3-1. VAC 2005-38: Request to Vacate a Portion of a Platted Setback and Platted Access Control.

<u>APPLICANTS/OWNERS:</u>	Dillon Real Estate, Inc, c/o Richard Russell Woodlawn 37, LLC, c/o George Laham
<u>AGENT:</u>	PEC, c/o Rob Hartman
<u>LEGAL DESCRIPTION:</u>	Generally described as the platted access control along the west side of Lots 1 & 2, and the south side of Lots 1, 2, 3 & 4, all in Block 1, all in the Dillon 12 th Addition, Wichita, Sedgwick County, Kansas and a portion of the platted setback along the west side of Lot 2, Block 1, the Dillon 12 th Addition
<u>LOCATION:</u>	Generally located on the northeast corner of the 13 th Street North - Greenwich Road intersection (District II)
<u>REASON FOR REQUEST:</u>	Replace nine (9) platted drives with five (5) drives and reduce platted setback in on a new lot created by a lot split
<u>CURRENT ZONING:</u>	The site and adjacent south, east and western properties are zoned "LC" Limited Commercial. Adjacent western and eastern properties are also zoned "GI" General Industrial and "SF-5" Single-family Residential. Abutting northern property is zoned "SF-20" Single-family Residential.

The applicant has applied for the vacation of the complete access control along the length of its Greenwich Road and 13th Street north frontages. The applicant proposes replacing the existing six (6) drives along its 13th Street North frontage with three (3) drives; two (2) right in/ right out drives and one (1) full movement drive. The applicant also proposes replacing the existing three (3) drives along its Greenwich Road frontage with two (2) drives; one (1) right in/ right out drives and one (1) full movement drive. Spacing of the proposed drives is closer to conformance to the current access control standards. There is platted access control on adjacent west and south properties (The Home Bank & Trust Company Addition and The Gateway Center 2nd Addition), which will be a part of the consideration of the proposed drives. The applicant is also proposing to vacate a portion of a platted 75-foot setback that is generally located on the north 272-feet (starting 50-foot south of its northwest corner) of its Greenwich Road frontage. A proposed lot split of Lot 2 will create a new lot on the north end of the site's Greenwich frontage. The applicant proposes to replace it with a 35-foot setback. The site is part of CUP DP-224, which has two existing lots of a similar size to the new lot and both have 35-foot setbacks along their street frontages; a 35-foot setback is the minimum setback for a CUP. No City water or sewer services are located in the within the proposed vacated portions of setbacks or access control. Comments from franchised utilities have not been received and are needed to determine if they have utilities in the platted setback or the platted access control. There is a platted easement along the site's Greenwich Road frontage. The Dillon 12th Addition was recorded with the Register of Deeds August 15, 1997.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the platted access control, per the approval of the Traffic Engineer, and a portion platted setback with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time October 27, 2005 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted complete access control and a portion of platted setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of the platted complete access control described in the petition should be approved with conditions:
- (1) Vacate that portion of platted access control along the site's Greenwich Road and 13th Street frontage, as approved by the Traffic Engineer. Provide Staff with a metes and bounds description of the location of the new drives by e-mail.

- (2) Vacate that portion of the 75-foot setback as described and replace it with a 35-foot setback. Provide Staff with a metes and bounds description of the location of the new setback by e-mail. Adjust the setbacks in the CUP to reflect the new setbacks
- (3) Both the vacation of the access control and the setback are contingent upon approval of the proposed Lot Split.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
- (5) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (6) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate that portion of platted access control along the site's Greenwich Road and 13th Street frontage, as approved by the Traffic Engineer. Provide Staff with a metes and bounds description of the location of the new drives by e-mail.
- (2) Vacate that portion of the 75-foot setback as described and replace it with a 35-foot setback. Provide Staff with a metes and bounds description of the location of the new setback by e-mail. Adjust the setbacks in the CUP to reflect the new setbacks
- (3) Both the vacation of the access control and the setback are contingent upon approval of the proposed Lot Split.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
- (5) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (6) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendation.

ALDRICH moved, **MITCHELL** seconded the motion, and it carried (9-0).

3-2. VAC 2005-39: Request to Vacate a Platted Drainage Easement.

<u>APPLICANTS/OWNERS:</u>	Socora Village Company, c/o Larry Chambers
<u>AGENT:</u>	PEC, c/o Rob Hartman
<u>LEGAL DESCRIPTION:</u>	Generally described as the platted 20-foot drainage easement located between Lots 3 & 4, Block 2, The Evergreen 5 th Addition, as recorded Wichita, Sedgwick County, Kansas (District V)
<u>LOCATION:</u>	Generally located south of 29 th Street North, west of Maize Road, and northeast of the Parkdale Court – Parkdale Street intersection
<u>REASON FOR REQUEST:</u>	Replace with another drainage easement
<u>CURRENT ZONING:</u>	Site and all abutting and adjacent properties are zoned "SF-5" Single-family Residential

The applicant is requesting consideration to vacate the platted 20-foot drainage easement, as previously described. A change in the grade in the abutting Reserve D, as a result of the construction of a wrought iron fence in it, allows drainage to the east of the platted easement. The applicant proposes to replace the platted easement by dedicating a 15-foot drainage easement to be located between Lots 2 & 3, Block 2, The Evergreen 5th Addition. The replacement easement is located just east of the easement proposed to be vacated. The applicant owns all of the lots involved in the vacation request. There are no utilities, water or sewer lines or manholes in the platted easement. The Evergreen 5th Addition was recorded with the Register of Deeds October 4, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted drainage easement as described in the attached legal, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time October 27, 2005 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described platted drainage easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted drainage easement described in the petition should be approved with conditions:
- (1) If needed, provide the Storm Water Engineer with any plans needed to determine if the proposed vacated easement is needed and if the replacement is easement will work. The proposed replacement easement is 15-feet wide, if determined by the Storm Water Engineer, be prepared to add an additional 5-feet to the replacement easement; typically 20-foot wide easements are the standard. The drainage easement will be retained until the Storm Water Engineer has approved vacating of the platted easement and any replacement easements.
 - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
 - (3) All improvements shall be according to City Standards.
 - (4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- 1) If needed, provide the Storm Water Engineer with any plans needed to determine if the proposed vacated easement is needed and if the replacement is easement will work. The proposed replacement easement is 15-feet wide, if determined by the Storm Water Engineer, be prepared to add an additional 5-feet to the replacement easement; typically 20-foot wide easements are the standard. The drainage easement will be retained until the Storm Water Engineer has approved vacating of the platted easement and any replacement easements.
- 2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
- 3) All improvements shall be according to City Standards.
- 4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

MOTION: To approve subject to staff recommendation.

ALDRICH moved, **MITCHELL** seconded the motion, and it carried (9-0).

❖ **PUBLIC HEARINGS**

4. **Case No.: PUD2005-05 #21** – Gary & Mike Kirk Request the creation of the Kirk Planned Unit Development on property described as;

The west 627.56 feet of the east 874.40 feet of the south 299 feet of the N/2 of the SE/4 of the NE/4 of Section 7, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located Approximately 1/3 mile south of 21st Street North and west of Maize Road.

BACKGROUND: The applicant proposes a 4.3-acre, two parcel mixed residential, public – civic and commercial Planned Unit Development (PUD), generally located 1/3 of a mile south of 21st Street North and 170-feet west of Maize Road. The unplatted site is currently zoned “SF-5” Single-family Residential. The western 3.01-acres of the site has a Conditional Use overlay, CU-156, that permitted a metal agricultural storage building for agricultural and non-agricultural storage. This eastern 1.02-acres of the site is not part of the CU-156 overlay.

Currently the western portion of the site is developed for Kirk's Excavating. On this portion of the site there are a metal storage building with one side of it open, a metal garage/storage building, a metal office building, what appears to be a private dispatch tower (85-feet tall, per the applicant's October 24, 2005 letter), a small shed, stockpiles (approximately 6 - 8-feet tall) of dirt and gravel, tractors, various types of trucks, scrapers, trailers and other equipment used by the excavation business. There is wooden privacy fence along the excavation company's south and north sides where it abuts "SF-5" zoned single-family residences and a church. There is no solid screening along its west side where it abuts "SF-5" zoned undeveloped land. The eastern 1.02-acres of the site is currently developed with a single-family residence. There is an evergreen hedge (over 6-foot tall) between this eastern portion and the abutting medical – dental offices. The entire site has no frontage on Maize Road. Access to Maize Road to the proposed PUD parcels is an existing drive, which passes by the south side of the existing offices.

The applicant's PUD site plan shows the site divided into two parcels. The two parcels reflect the current configuration of the western excavation business (Parcel 1) site and the eastern single-family residence (Parcel 2) site. The site plan shows the existing buildings, general groupings of existing plants/landscaping and the area where materials are stock piled. The site plan's general provisions propose standards for utilities, signage, drainage, ownership's responsibilities, fire, circulation/access, screening and landscaping. The site plan shows access to the PUD through the previously mentioned existing drive. The site plan does not show the existing solid screening, lighting, parking, the dispatch tower, or signage.

The proposed uses for the two parcels are identical, with two exceptions. The western Parcel 1 is proposed to have a 150-foot wireless communication facility (see applicant's attached letter) and the eastern Parcel 2 is proposed to have ancillary parking. Per the Unified Zoning Code (UZO), both uses are considered commercial types. Uses common to both parcels include:

- (a) Single-family residential, duplex residential, multi-family residential (see letter) and assisted living. Per the UZO, all these uses are considered residential types.
- (b) Group home, limited and general and convalescent care, limited and general. Per the UZO, all these uses are considered public - civic types.
- (c) General office, personal improvement services and construction sales and services, as defined in the applicant's attached letter. The use of the wireless communication facility is included in Parcel 1's definition of construction sales and services and not in Parcel 2's. The excavation business currently on Parcel 1 appears to have a private dispatch tower, which is presumably what the applicant is referring to. Per the UZO, all these uses are considered commercial types.

Development abutting the site's east side, on properties zoned "NO", Neighborhood Office, are a single-story dental office (built 2001) and a soon to be finished single-story medical office. These two buildings/developments are between the site and Maize Road. Abutting the south side of the site, zoned "SF-5", is the Winwood Addition's (recorded January 2, 1996), with its 49 single-family residences. The partially developed 33.37-acre Westlink Christian Church Addition (recorded June 15, 1998) abuts the site's north and west sides. All of the Westlink Christian Church Addition is zoned "SF-5" with the north portion of the subdivision developed as a church (built after 1998), while the western portion remains undeveloped. Single-family residences, zoned "SF-5", are west of the churches undeveloped western portion.

Beyond the development in the site's immediate area, on either side of Maize Road, between 21st and 13th Streets North, commercial development is located at the arterial intersections (zoned predominately "LC" Limited Commercial) with predominately single-family residential development (zoned "SF-5") between these commercial nodes. An exception is a large (37.81-acre) cemetery, zoned "SF-5" with a Conditional Use overlay, located midway between 21st and 29th Streets North. There is also a small bundle of "TF-3" zoning southeast of the site.

According to the FCC Antenna location map for Wichita and Sedgwick County, the nearest cellular tower is approximately ¼ mile north of 29th Street North and approximately ¼ mile west of Maize Road. The nearest microwave tower is located approximately ¼ mile south of 13th Street North and midway between Maize and Tyler Roads. An application for an Administrative Adjustment was made for a cellular tower north of the site, off of 21st Street North and west of Maize Road.

CASE HISTORY: The site is not platted. On December 12, 1973 the County Commission approved CU-156, permitting a metal agricultural storage building for agricultural and non-agricultural storage on what is proposed to be Parcel 1 of the PUD. At that time the site was zoned "R-1" Suburban Residential. The entire site was annexed into the City in 1999. On August 15, 2005 the applicant completed a "Nonconforming Registration Form", to determine if the site's (Parcel 1) current excavation business was a legal nonconforming use. In a letter dated August 25, 2005 the Zoning Administrator confirmed the excavation business was a legal nonconforming use, while noting its current extensive outdoor storage of equipment and materials. In that same letter the Zoning Administrator stated that if there was a significant increase in outdoor storage or if construction of another building was desired, an amendment to CU-156 or rezoning of the site might be required.

At the November 3, 2005 MAPC meeting the applicant's agent requested a two-week deferral. There were people present at this meeting wanting to discuss the proposed PUD. The MAPC gave them the opportunity to speak about the case at this meeting or in two weeks, if the deferral was granted. Those wanting to discuss the case advised the MAPC that they would prefer to speak about the case when the MAPC was ready to make a recommendation on the PUD. The MAPC then moved to approve the requested two-week deferral and advised the members of the public not to file protest petitions until the after the case was considered at the November 17, 2005 MAPC meeting.

DAB V considered this case at their November 7, 2005 meeting and unanimously recommended that the requested PUD be denied.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-Family	Large church
SOUTH: "SF-5" Single-family Residential	Single-family residences
EAST: "NO" Neighborhood Office	Medical & dental offices
WEST: "SF-5" Single-family Residential	Undeveloped land owned by northern abutting church

PUBLIC SERVICES: Maize Road is a four-lane arterial at this location. The 2030 Transportation Plan of the Wichita/Sedgwick County Comprehensive Plan designates this portion of Maize Road to remain a four-lane arterial. No projects exist in the CIP for this portion of Maize Road. Traffic counts on this portion of Maize Road, between 21st and 13th Streets North are between 17,012 - 12,025 vehicles per day. All public services and all utilities are available on the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" identifies the application area as appropriate for "local serving commercial" development. The Guide suggests "commercial, office, and personal services that do not have a significant regional draw", as appropriate development for "local serving commercial". The Commercial Locational Guidelines of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The Wichita/Sedgwick Unified Zoning Code (UZC) states that the purpose of the PUD zoning district is a "special purpose" zoning district that is intended to encourage innovative land planning and design and to avoid the monotony sometimes associated with large developments. The proposed PUD basically extends the area of CU-156 east onto the single-family residence, allows some local types of commercial uses, mixed residential and would allow a 150-foot wireless communication facility. In a letter dated September 21, 2005 the applicant assumes that the "GC" General Commercial zoning district is the first that permits, by right, construction sales and service as defined by the applicant. The applicant's definition of construction sales and service closely matches what the "OW" zoning district allows more outside storage for contractor yards and wholesale of materials, with no retail sales. The "GC" zoning district does allow a 150-foot ground mounted wireless communication facility, with an Administrative Adjustment, if it conforms to the Location/Design Guidelines in the Wireless master Plan. A 150-foot facility would not be permitted except as a Conditional Use in the "OW" district and in the site's current "SF-5" zoning. The uses proposed in the PUD, with the exception of the 150-foot wireless facility and the ancillary parking, all are permitted by right in zoning districts more restrictive than "GC" zoning.

The PUD's proposed mixed residential uses (minus the single-family residential) are not in character with development in the area, which is single-family residential with the exceptions of the abutting church and a large cemetery southeast of the site. It is arguable that a duplex, multi-family or assisted living development (with design, materials and height restrictions) could provide a transition between the large church north of the site and the single-family residences south of the site. The same observations can be applied to the public – civic uses it proposes. The proposed commercial uses are partially in character with the area in that they would permit similar development as the medical and dental offices that separate the site from Maize Road. They would also allow some types of personal services, such as a health club, that would be better located in a commercial node. The proposed non-residential uses, for the most part fit the Land Use Guide's "local serving commercial" development criteria of "commercial, office, and personal services that do not have a significant regional draw".

RECOMMENDATION: The purpose of the proposed PUD could be partially realized by an amendment to CU-156, in regards to the current excavation business on a portion of the site. The existing excavation business began on a smaller scale when the site was in the County. Since that time the site and the area around it has been annexed into the City of Wichita and the subsequent development around the site has been mostly urban scale single-family residential, with the exception of the medical and dental offices abutting it. The large church north of the site is permitted by right. Because of development trends in the area, the excavation business is now an exception to development in the area. An amendment to CU-156 would allow the base "SF-5" zoning to remain in place to allow the possible development of single-family residences in the future. The PUD's proposed general office use would allow the extension of development similar to the dental and medical offices that are currently abutting the site's east side. The PUD's proposed uses of duplex residential, assisted living, group home, limited and general and convalescent care, limited and general could allow some flexibility for future development of the site, that would be somewhat similar to the existing office development east of the site and it would be no more intrusive than the large church is to the existing single-family residences in the area.

The applicant has requested a 150-foot wireless communication facility be allowed to be located on Parcel 1, where the excavation business is located. The applicant has not addressed the Location/Design Guidelines of the Wireless Communication Plan, in regards to justifying this request, thus Staff cannot recommend this use. Staff feels the inclusion of personal improvement services and multi-family residential out of character with the area and cannot recommend these uses.

Based on these factors, plus the information available prior to the public hearing, Staff recommends an amended PUD be APPROVED subject to the following conditions:

- (1) Revise permitted uses on Parcels 1 & 2 shall be single-family residential, duplex residential, assisted living, group homes limited and general, convalescent care, limited and general, and general office; all these uses are to have a maximum height of 35-feet and designed and built of materials to resemble the abutting single-family residences. Construction sales and services, with no retail sales and outdoor storage per the "OW" Office Warehouse District, with no buildings taller than 35-feet. The existing 85-foot private dispatch tower remains on Parcel 1. Maximum building coverage and gross floor area remains as stated in the original PUD.
- (2) Revise general provision #10, by adding that no lights shall be taller than 14-feet in height and, that no pole lights shall be located within the setbacks along the west, south and north sides of the property. Compatibility setbacks will be in effect for all development that is not residential. The front of the PUD will be the eastern parcel line of Parcel 2, as the site is currently developed. The "SF-5" zoning district's setbacks will be in effect for all residential development.
- (3) Add to the general provisions that solid screening will be provided on the north, west and south sides of Parcel 1 where it abuts "SF-5" zoning. If non- residential development replaces the existing single-family residence on Parcel 2, solid screening will be provided where it abuts "SF-5" zoning.
- (4) Revise general provision #4 to read that the Parcel 1 & 2 will share one monument type sign.

- (5) Add that the hours of operation for construction sales and services and specifically the excavation business shall be sunup to sundown.
- (6) Stockpiling of materials will be no higher than 15-feet and will be behind all setbacks as stated in the PUD.
- (7) Employee and customer parking for construction sales and services, including the current excavation business will be paved. All other non-residential and residential parking will be per City Standards. A revised site plan for the PUD will show current parking areas and show the number of parking spaces.
- (8) Keep all the other general provisions in place.
- (9) All property included within this PUD shall be platted within one year after approval of this PUD by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the PUD zone change shall not be published until the plat has been recorded with the Register of Deeds
- (10) Prior to publishing the resolution establishing the PUD zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as PUD #21) includes special conditions for development on this property. The applicant shall submit four (4) revised copies of the PUD to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is predominately zoned "SF-5", with three (3) lots zoned "GO". Development is predominantly single-family residential, with the three "GO" lots developed as medical, dental and an insurance office. All three are built to resemble the single-family residences around them. A large church and cemetery (both zoned "SF-5") are also in the area. The excavation business is a holdover from when the area was in the County.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed as single-family as currently zoned, and in fact the eastern portion currently has a single-family residence on it. CU-156 is what initially allowed the excavation business. In the opinion of the Zoning Administrator any future expansion or new buildings for the excavation business might require an amendment to CU-156 or rezoning. The PUD as revised by Staff would allow expansion of the excavation business and allow other development that is not entirely out of character with the area, but at a larger scale.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The PUD, which allows the expansion of the excavation business, could have negative effects on the single-family residential abutting the site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide identifies the site as appropriate for "local serving commercial" development. As a PUD, this request would mix low-density residential use and non-residential uses that fit the "local serving commercial" profile, while allowing the existing excavation business to expand within the provisions of the PUD. The proposed development, with the exception of the excavation business, is in accordance with the commercial locational guidelines of the plan.
5. Impact of the proposed development on community facilities: The proposed development could result in increased traffic on this portion of Maize Road.

BILL LONGNECKER The applicant proposes a mixed residential and office Planned Unit Development, while retaining and expanding the existing Kirk's excavation business. The site is currently a contractor's yard for the excavation business on the western parcel, and a residence on the eastern parcel. The neighborhood around the site is zoned "SF-5", Single-family Residential, with a large church and its property on its north and west sides, and single family residential on its south side. There is more single-family residential west of the church property. A dental and medical office, zoned "GO" are east of the site, and are between the site and Maize Road. The area around the site is predominately single-family residential. Staff has amended the PUD that the applicant brought in, eliminating the proposed uses of multi-family and the personal care off the uses. The applicant has also asked that a 150-foot wireless communication facility be allowed on Parcel 1. The applicant did not address the location and design guidelines of the Wireless Communication Plan in regards to justifying this request, and thus gave staff nothing to consider in regards to the site being appropriate for a tower. Therefore, Staff recommends denial of this use. In fact, Staff identified the nearest towers in the area and I can tell you that an application for a tower was made on 21st Street North, west of Maize Road on property zoned commercial and within other commercial properties. There is an existing 85-foot dispatch tower on the site, which we have agreed to let remain, although we are not clear on if it would remain if the 150-tower were built, or if it would come down. The uses proposed by the applicant for the two parcels are identical except for the tower on the west parcel and parking on the east parcel. We have added 10 provisions or modifications to the applicant's provisions to the PUD. District Advisory Board V has already considered this request and recommended that the PUD be denied, and that the property remain zoned as it is - SF-5 Single-family Residential with the existing conditional use, CU-156 in effect, as it is defined in the Zoning Administrator's letter, included in your packet, which gave the excavation business legal nonconformance status. This letter also states that any future expansion or building on this site would possibly require the owner to apply for an amendment to the CU or rezoning.

I think we need to look at the case history of this property, because the history of its zoning has become the issue. On December 12, 1973, the BOCC approved CU-156, which permitted a metal agriculture storage building for agriculture and storage on what is proposed to be Parcel 1, the western parcel where the excavation site is located. At the time of the approval of the Conditional Use the site was zoned R1 Suburban Residential. The entire site was annexed into the city in 1999 as a unilateral annexation. It was one of many scattered isolated properties in northwest Wichita that had been surrounded by the city during its growth in the west. On the annexation map, that the applicant has provided, the property was identified as having commercial use, the excavation business, but it was not identified as having commercial zoning, which was correct. During the earlier District Advisory Board meeting the applicant stated that the property was identified as being zoned "GC" General Commercial on the GIS website, which, the applicant said, matched its use, and which the owner of the property assumed was correct. Subsequent investigation by staff

found that no application has ever been made by the property owner, the governing body or the MAPC to change the site's zoning from single-family residential to "GC" or any commercial zoning. We have found a paper trail on this site being annexed, changes in the zoning code which made the "R1" into "SF-20", then the annexation changing the "SF-20" to "SF-6", the SF-6 changing into "SF-5" and the CU on that western portion. The site apparently was mistakenly identified as "GC" zoning when our zoning maps went from paper to the GIS system between 1999 and 2000. But, again, staff found no record of anyone requesting commercial zoning on the site. As previously mentioned, the applicant did ask the Zoning Administrator to look at the current excavation business on the site to determine if it was a legal non-conforming use, which it was determined to be. The site is zoned single-family residential with a conditional use overlay, and its current use being determined as a legal nonconforming use. The site and its uses have been surrounded by the city and the zoning has always been some type of single-family residential or rural.

DUNLAP On the cell tower, are they proposing to remove the 85-foot tower they have and put in the taller tower in the same location?

LONGNECKER My understanding is they propose to let the 85-foot tower remain and build 150-foot tower also.

TIM AUSTIN, POE & ASSOC. Agent, before I get started, Mr. Dunlap to clarify your question, the thought process is that we would rebuild that tower so that there would not be two towers, but the one 150-foot tower. This has been a long time business within the community, starting in 1958 and has operated there since then. The City of Wichita has grown up around it and the first residential subdivision within close proximity of the site that was platted was Amaratto Estates, also known as Stonegate, which is to the east across Maize Road. The residential subdivision to the south was actually platted in 1995, and was developed by a different property owner and different developer. We have a difficult situation. Mr. Kirk, at the time that it was annexed in 1999, indicates that it was represented to him that the property would be annexed as commercial property. Certainly in the map that is being handed around as an attachment to that annexation report, clearly shows that it was a commercial use, but as we know, use and zoning, may or may not be the same thing. It was very clear that was a commercial property, and that is how it was always used that way, and the way it exist today it certainly is a legal use, it may not be in conformance with the Zoning Administrators understanding of what he believes the zoning to be but my goal is to bring him into legal compliance, and I have tried to do so.

The main reason is that he has an existing business operation, and that land is an integral part, and it is an asset to his operation, and my second goal is to maintain the value of the property to the extent that if that property could be redeveloped and maintain some value in it as commercial property. If the PUD is denied the property has only has two uses, it will either be used as a contractors construction yard, or it will be used as residential property.

When I first got into this project I was the one that actually discovered that it was not "GC" General Commercial zoning. You will see in your packets that another agent had looked at this property for a cell tower because Mr. Kirk does have that existing 85-foot dispatch tower. Certainly everybody believed that it was "GC" zoning but when Mr. Kirk decided to use another tower builder as a possible client, and I got involved we started finding these discrepancies, and found out there was some apparent error in the map, and that it was in fact not zoned "GC" which we all thought it was.

When you look at his business operation as it has operated since 1958, the first zoning category that meets what he is doing out there is "GC" zoning, and it is not "OW" Office Warehouse zoning. The primary reason is one, because of the dispatch tower, and secondly because of the outdoor storage. Prior to filing this case we did have discussions with staff on how the best approach this, and staff has recommended "OW" and I was still hung up on "GC" because he is legal non-conforming, but in order to be conforming he should not have to give up his business operation or modify his business operation really any different then it has operated for the past almost 50 years.

Looking at the outdoor storage, he does have an excavation company, and has materials stored outside including soil, rock, and different types of pipe. Sometimes outdoor storage is upwards to about 40,000 square feet. Under "OW" zoning your outdoor storage is limited to 100% of the floor area, and if you look at the square footage of the buildings, its only about 7,200 square feet, so obviously it doesn't work.

One of the things that he does as part of his business operation is maintaining his scrapers, his backhoes, and machines at his site. He does have an internal shop. It is not real clear when you read the Unified Zoning Code definitions of construction sales and services that a use that is incidental to the overall use as a contractors yard, such as mechanical maintenance of machinery is legal, so that's why I rewrote the language to make it a little more narrowly defined but also to bring clarity to that definitions so that in the long run if someone else wanted to use it they would have an understanding what was allowed in terms of the activities in that business.

When I looked at the different uses I tried to maintain and identify uses that were of less intensity or no greater intensity and it's being used for all intents and purposes as "GC" zoned property. I find it difficult to believe that multi-family would not be allowed in property that was "GC" zoned. Multi-family is allowed in "GC" zoning. Recognizing the single-family uses around the site, I stated that the multi-family could be no more than two stories tall, and limited the density, so that the impact of any multi-family would not be any greater than what that impact would be as a construction yard. I think I achieved that. We do not agree with staff's conditions, and in fact we disagree with just about all of staff's conditions.

Staff in the report comments that they couldn't recommend or support the communication tower because we didn't have an applicant, and that we didn't have a carrier on board. The Zoning Code, and the Wireless Master Plan, does not require that. What is required is that at the time of obtaining the building permit that you demonstrate need, and that is when you submit all of your search rings, and things like that if you were going through a Conditional Use application. We have unrestricted property all over this town that is zoned commercial, and, quite frankly, in residential a tower builder or carrier can go in and build a wireless communication facility, all they have to do is demonstrate need. But because of the nature of what we are doing and recognizing there is a company that has already contacted him, and it is in the information that is provided to you, and that company went to the north side of the Westlink Christian Church property and actually asked for an administrative adjustment there. We know there is a need, and it is stated in writing and they looked at the Kirk property first and so the wireless industry is looking into that.

It is a matter of what the Wireless Master Plan says, for those of you who sat through the process that was a very lengthy process, and it ran about 14 months, and there was a lot of dialogue between industry, planning staff, governing bodies, and we have a very good Wireless Master Plan. One of the things the plan does is it encourages communication towers into commercial property. We don't think this application or this request is inconsistent with anything that this body has approved in the past or the governing body, or quite frankly the planning staff. The existing tower that is there is 85 feet, and it is at a setback ratio of 1.7:1 to the south property line, and the one that we would propose would be no greater than 150 feet and no further adjustment it would be at 1.8:1 setback. This body and planning staff has approved administratively towers that are significantly less than a 1:1.

We are not in favor of staff comments, especially those conditions that prohibit his operation beyond what he is doing today. Like sundown to sunup operation or a platting requirement. There is no need for him to plat he operates we believe that we have been sensitive to the environment and the setting.

HENTZEN I live on the west side since 1957, and that place has been there all my life doing the same thing they are doing now. Do you know when the neighborhoods close around were put together for single-family use? Were they zoned that way before or has that happened since these people went into business?

AUSTIN The zoning on those properties was always the same, single-family zoned property. The property that is the closest residential subdivision is to the south, the Winwood Addition, that was platted in 1995.

HENTZEN The cell tower that is there now, functions for this business, and that is what the new tower needs to be used for?

AUSTIN That is correct. The existing 85-foot tower would be rebuilt. It is in a location that restricts expansion in Mr. Kirk's office space that is out there today. We would relocate it closer to the north property line, and extend some height to it. One thing I might note about the dispatch tower, that is a FCC licensed tower, and it has been there since the 50's and it has been there almost as long as the business has been there.

HENTZEN As I read the background on this staff report I got the impression that staff did not receive a landscape plan for the tower and therefore they couldn't approve it, that is not a problem is it?

AUSTIN Not in my opinion, I think if there was some additional language that I would put to the tower or the PUD. I would say that it is an existing 85-foot tower and we would allow a 150-foot tower subject to the design guidelines or site guidelines of the Wireless Master Plan, meaning if someone is going to come in and it is going to be a monopole they are going to have to put together a landscape plan. Certainly we can address this issue of height within this application. We all know that you have dozens of these things come through, and very few have come in at 100-foot. Most are 120-180-foot, and out in the county it is up to 300 feet. The number one site guideline of the Wireless Master Plan is to look at something that could be rebuilt or disguised meaning like a bell tower. The church is the tallest facility, there and they had a BZA to increase their roofline to 45 feet because in "SF" zoning you maximum height standard is 35 feet. So there is no opportunity to disguise something or rebuild something other than this dispatch tower, which is the number two criteria. This is a commercial property, it may not be zoned that way but it certainly has been used that way.

DUNLAP The first line of the recommendations, and I want to ask, why not amend the Conditional Use instead of doing a PUD?

AUSTIN In order to amend a Conditional Use the process would be the same, and if you read that original Conditional Use I would have to modify it completely because, as I read it and my interpretation of it, a bar and a metal building to store non-ag equipment in it, it doesn't talk about his office use, or the outdoor storage. I felt this was a better vehicle to achieve the land use and zoning goal.

CHARLES R WILSON, 1820 N. LARK COURT I am the president of the Winwood Addition Homeowner Association, and we are opposed to this rezoning request. It will be very detrimental to the entire single-family residential communities that have risen up around Kirk Excavating Company. In fact, the 52 residences in the Winwood Addition would have never have bought property in that particular area if they thought at any time they would have a possibility of having a tower erected adjacent to their property. A tower will devalue the properties here. It is unfair to these residential homeowners to even suggest such an item, and this would benefit only one person and that is Kirk Excavating. All of the 52 residences that bought properties there bought them from Don Klausmeyer, the builder. At that time he and his real estate people told us that the Kirk Excavating people were going to move out of that area, so we were lied to in regards to the intent of Kirk. I can't see putting up another tower, the 85-foot tower is not nice to look at and it is not in use. They have allowed a medical office, and a dental office to be constructed on Maize Road, and they only have one small road going into that particular area, and I don't know how that drive could accommodate traffic if they had apartment building there. Right now Maize Road is very heavily trafficked, and Kirk's proposed uses would just increase traffic, which we don't need at this particular time.

HENTZEN Was the 85-foot tower there when you bought your house?

WILSON Yes, the tower was there.

HENTZEN You mentioned that somebody had told you that Kirk's was moving was that in writing or verbally?

WILSON No, it was verbally.

JOHNSON How long have you lived there?

WILSON I have lived here about seven years. We are right along the south edge of the Kirk Excavating property. These pictures that Bill Longnecker showed, I don't know how they got that property so cleaned up because it doesn't look like that 95% of the time, and it is not pleasant to view. They pile a lot of surplus material in the area. Presently they have huge mounds of dirt that have sat there for a considerable amount of time, which are grown over with grass and weeds. It has caused a drainage problem where we

get a lot of moisture in the backyards of the residences boarding there. They are flooded and they cannot really landscape their property properly, and they know this exists but they have never taken any steps to correct that.

LOWELL RICHARDSON Chairman of the Building Committee for Westlink Christian Church The church represents hundreds of families who have given their money to build what will soon become almost a 20 million dollar facility. The church started at 10th & Tyler in the mid 60's, and it moved to this site in 2003 at a cost of 12 million. We consider our physical plant to be critical to our mission of reaching families in the west side of Wichita, so you can see why we want to safeguard how it looks and its surroundings. When we purchased the property Kirk's was there, and it was our understanding that it had a Conditional Use and single-family zoning, and should he cease to operate his business it would revert to the single-family zoning. Frankly no one in west Wichita has benefited more than businesses like Kirk's because of the development and expansion of the city out here. But you really can't have it both ways. You are either in the country and you don't have neighbors that have expectations or you are in town and you put up with neighbors who have expectations, and Kirk has stayed there deliberately knowing that he would have neighbors. In fact, the land that is adjacent to the Kirk property is owned by the church, and was owned previously by the Kirk family who sold it for development purposes knowing that someday there would be neighbors there to contend with. Those neighbors have a right to expect that the City and the County government would protect those property values.

With regards to our position of the PUD, in spite of my previous comments we are in agreement with staff recommendations provided it includes a restriction of no greater height for a communication tower than they have today, and that is key to our agreement. We also agree to the screening requirements there, however you need to understand that the screening along the north side was recently built by the church at a cost of \$7 million to clean up our view to the south. The point here really is whether a Conditional Use entitles the holder of that Conditional Use to a higher use than the underlying zoning would permit, and that is the decision I think you have before you today.

JOHNSON When your church decided to move to this location what was one of the reasons that you wanted to move in this area?

RICHARDSON We wanted to stay close to the location that we were at, 10th & Tyler, and we needed as much property as we could find. This was the only site frankly that we could buy and find 34 acres of land.

JOHNSON I am sure you were looking close to a commercial area?

RICHARDSON I think if we came to you and said we want to build a church of this size without arterial access, you would have a hard time with that.

JOHNSON I don't know if that is true. It looks like most churches built today are built in commercial areas. If this property to the south is zoned commercial, I am curious why that would not be a benefit to you rather than a hindrance?

RICHARDSON I don't understand why that would benefit us.

JOHNSON Is there any other commercial property around you?

RICHARDSON Sure.

JOHNSON Does it hurt you?

RICHARDSON I don't understand your question. We understand that we are on an arterial street. We understand there is a lot of traffic. We understand there is commercial zoning around us. This is not about that surrounding property. This is about this case here today, and what our expectations were when we bought the property, and about a Wireless Communications Tower of 150 feet.

DUNLAP How is your property zoned?

RICHARDSON It is zoned single-family.

DUNLAP Single-family with a Conditional Use?

RICHARDSON No, churches are allowed in single-family zoning.

DUNLAP Do you own the property to the west?

RICHARDSON We own property on two sides of Mr. Kirk.

DUNLAP The expansion you are planning is where, and what do you plan to do?

RICHARDSON We would add some to the immediate west attached to the church itself.

DUNLAP So that would push the parking down to the southwest of his property?

RICHARDSON Probably not, as you can see on the aerial, the north side is graded and has been added as parking since that aerial was taken. We have adequate parking today.

DUNLAP I was on the Planning Commission when your application came to build the church and I remember some of the same arguments from the neighbors about your building.

RICHARDSON We did not ask for a zone change or ask for 150-foot communications tower either.

MITCHELL Help me understand how a difference of 85 feet to 150-feet for a tower would affect the use of the church.

RICHARDSON It would affect the church the same way that it would affect the whole area, which is the aesthetics of the area. If it were a single needlepoint tower as you have there today that would not be the same, but that is not what 150-foot cell tower looks like. It is also likely that in the future there would be several carriers on the tower, and it that would not be aesthetically pleasing, and that is our objection to it.

WARNER Did you purchase your land from Kirk?

RICHARDSON We did not. I think Mr. Kirk sold it about 1994-95, and we purchased in 1996 from the second party.

PAUL WIBEY, 10606 Westport; I am a former president of the Winwood Homeowners Assoc. I have been here since 2000. We bought our house here because it really was an aesthetically looking area. We do recognize that Mr. Kirk has been here before us, and the 85-foot tower is not a problem. The 150-foot tower is the problem, and that is the big issue for us. It is not going to fit in with what we have already in place as a residential area. There are a lot of commercial businesses in the area and that we looked at that when we bought our home. There are things that we need to have as homeowners to live in our area, like commercial, and things like a 150-foot tower that we can do without. My wife, daughter and I planned on living here quite awhile, and whether the tower goes in or not we are going to stay. We like our house and our conveniences but I do want to re-iterate the recommendation of staff, we are opposed to the tower. The DAB recommendation of no zone change or tower, we are also 100% behind. Other issues with Kirk's that have come before our Homeowners Association have been drainage and fencing. Properties abutting Kirks' have 3-4 inches of water in their backyard because of the drainage. Traffic is very intense from the site.

WARNER Do you think the drainage you are having is Kirk Excavating's fault?

WIBEY I do, because it becomes more pronounced with the excessive piles of materials.

WARNER Has he changed anything on his property since your development went in that would have facilitated more drainage onto you?

WIBEY I know the piles of dirt have been a little bit higher here lately and at times there are more of them. The piles come and go with the jobs I suppose that he has, but it has been an ongoing problem.

WARNER You don't think the homeowners or the developer have any responsibility to drainage?

WIBEY I believe the developer has a lot of responsibility and that the ponds that we have in place are our drainage ponds, put in by our developer. The houses on the south side of Kirk Excavating, I think, drain to the west pond for the most part. Through the different homeowners we try to get that taken care of through talking and working things out like that but I think Kirk's has a responsibility to try and diminish the drainage problem onto the residential properties.

AUSTIN The comment that was made that the current dispatch tower was not in use, that is not accurate. It is being used as part of the business operations. I understand there is a certain amount of traffic, and again the uses that I propose as far as uses that would be allowed in my mind do not increase the traffic anymore than what is existing or could be existing. The representation from Don Klausmeyer, that property and somebody at the DAB meeting had said Kirk's had sold the property to the south and that was ultimately developed as Winwood, that is not accurate. I don't want anybody to think that Klausmeyer or whoever the developer was had any connection with the business. As far as the drainage problem I think Mr. Kirk has been trying to maintain that. He is receptive, all they have to do is pick up the phone and call him, and he has graded a drainage swale when that run off coming off those piles, and he has tried to be sensitive to their needs on that. Someone made the comment that the restrictions are appropriate. I think the restrictions are not appropriate, as staff has presented. The restrictions that I have submitted are more appropriate and will allow greater use. It is not that we are trying to change zoning to be something other than what it is being used. It is consistent with the use of the property. The property is being used as commercial property, and it is consistent to zone it that way, and that would be good planning. The church has 70,000 square feet, 580 parking stalls and they are in the middle of an expansion. The church at some point and time if they wanted to locate out of there they would want to zone their property commercial.

ALDRICH Can you explain the type of design of the tower that you are looking at, would that be a monopole type design?

AUSTIN It would be under the Wireless Master Plan; pretty much everything is a monopole.

ALDRICH Compare that to what the 85-foot existing tower that is there now.

AUSTIN It is not as big around and it wouldn't have the structural needs that a regular cell tower monopole would have. It will be bigger and larger but it is also going to be setback to the north. Under the Wireless Master Plan it is minimum 1:1 and I calculated it be at 1.8:1.

MITCHELL Starting with recommended Conditions #1, the 85-foot tower is a deal breaker for you?

AUSTIN Are you asking me if it is a deal breaker in the context of all staff recommendations?

MITCHELL I would like to go through them one by one to see what you can agree with, since you have stated that you do not agree with hardly any of staff's recommendations.

AUSTIN It would be easier to say I would want the uses that I listed in my second letter to planning staff, which includes the 150-foot cell tower.

MITCHELL The same thing with #2?

AUSTIN Number two we could agree with that with the exception of the compatibility setbacks, and mainly because some of his existing buildings would be in noncompliance with compatibility setbacks, so what I suggested at the DAB the other night was that we would maintain the compatibility setbacks standards to the south property lines, again trying to be sensitive to those homes that are abutting us to the south. So I would apply that to the south property line only.

MITCHELL Number three?

AUSTIN We would agree.

MITCHELL Number four?

AUSTIN We would agree.

MITCHELL Number five?

AUSTIN No.

MITCHELL Number six?

AUSTIN We would agree.

MITCHELL Number seven?

AUSTIN No.

MITCHELL Number eight?

AUSTIN We would agree.

MITCHELL Number nine?

AUSTIN No.

MITCHELL Number ten?

AUSTIN We would agree.

DUNLAP Let's go back to number three, didn't I just hear that the church has screened the north side already?

AUSTIN Yes, so it would basically be fencing in the west side. At present there is a wire fence there.

DUNLAP What do you know about the drainage issue?

AUSTIN It was brought up at the DAB, and I visited with Mr. Kirk about it, and he does keep that graded in there, and quite frankly I had intended to go and look at it but I have not had an opportunity to do so.

DUNLAP Do you believe it is your fault?

AUSTIN Without knowing the specifics of what their issues are I can't reply yes or no. All I can say is the Mr. Kirk is willing to work with those neighbors to address that drainage problem.

DUNLAP What is the width of the driveway?

AUSTIN About 24 foot wide but I believe there is a 35-foot easement in there.

DUNLAP I am curious about the inclusion of the multi-family and care home, is there a plan for that or is that something you have got to have? I there a long term plan for this property?

AUSTIN Not really there are some physical limitations about how much of that land can be developed. The rule of thumb is around 25-30% building coverage. I did not look at it from that standpoint. He had offers on the property and somebody wanting to build it. It was mainly looking at what other uses would be appropriate based on the comprehensive plan and design guidelines for all those uses and give him some flexibility for that property to be redeveloped because flexibility equates to value. But it is not anything more intense than what's existing today. At some point the excavation business is not going to fit on that property, and it may be because of the pressure from the church or from the pressure from the people around but it is not going to fit.

MIKE KIRK About nine years ago we had a developer try to find me property to move to in the northwest quadrant of Sedgwick County. Four properties were identified and the County refused any kind of zoning to let me move. I could go down on West Street with the other people on tractor road, but that was not acceptable for what we do. We wound up staying where we are at because we haven't been able to find a place. I gave them latitude short of Valley Center, to Andale, Colwich and Goddard. There are a couple of places in Goddard that would have worked but the safety factor for us trying to cross the highway just didn't work. When my dad purchased the property and set the business up, well you just can't do that today. The other issue I want to address is when

we built the fence on the south side we had all the drainage finished and we worked with the people. Nobody has called me to tell me we had a problem. We established the drainage and fixed it before the fence was built and we even opened the fence since then and let people come in and take dirt as necessary to do what they wanted to do in their own backyard at no charge. Unless people tell me they have a problem there isn't anything that I know to fix.

DUNLAP On this property assuming you do find a place to move or decide to shut down, what do you intend to do with this property?

KIRK Originally it was to be sold to the church. I didn't know people were told by Klausmeyer or whomever that I was moving.

SHERMAN When this was annexed in 1999, there was no residential development around that area?

AUSTIN There was.

SHERMAN I am curious about condition five, why are you so adamant about not agreeing to business hours from sunup to sundown. Why is that a problem?

AUSTIN Because in the construction business nobody works sunup to sundown, especially in dirt work. It would be like telling a farmer he can only work from sunup to sundown. He doesn't have that restriction right now. If he has a job and needs to move equipment out and it is a half hour before sunup, and his guys are in, and they are greasing up their equipment they are moving out. That is what happens.

SHERMAN What are his business hours now?

AUSTIN They are dependent on what jobs he has going, the time of year.

SHERMAN If I remember correctly we have had other businesses that are real similar to this excavating, and they had agreed to a set hours of operations.

JOHNSON I think this a little different because they have an operation here but it is his shop. They are not building materials. It is not a rock crusher. It is just an equipment yard where he stores his equipment, and he probably leaves and comes late. It probably is not as noisy as a farmer that was there plowing at night.

HENTZEN The zoning question was because the Zoning Administrator thought it was not properly zoned? What zoning are you looking for?

AUSTIN We are looking at a PUD that would essentially be very similar to a "GC" with a Protective Overlay in restricting uses. The other reason for the PUD was to redefine the construction sales and service language. It is also about the uses. This is an asset to his business. It has a certain value, and it has been represented as "GC". It had a value until someone came in and said there is a discrepancy here and all of the sudden it was not "GC" zoning, and by providing those uses in there and looking at flexibility to develop that as a commercial piece of property in a manner that is less intense than existing use, maintains the value of the property.

MILLER The Zoning Administrator is not inquiring or suggesting that this use is not appropriate, in fact he has written a letter saying that as it currently stands and operates he is in compliance with the existing Conditional Use. It is not a case where the Zoning Administrator is saying that he is not in compliance.

HENTZEN I wonder why you are here?

MILLER He is here because of the tower.

AUSTIN That is not a true statement, and I object to that comment.

MILLER There is a lot of detail being glossed over, but as staff there is more to it than what you are hearing.

AUSTIN I would object to that representation, and frankly I am offended by it. I have made no glossing over that the tower is an integral application I have talked about it. I stand behind the podium not as a representative of the person who wants to build a tower for Mr. Kirk. I represent Mr. Kirk for this PUD.

MOTION: To support staff recommendation.

HILLMAN moved

WARNER Motion dies for lack of a second.

MOTION: Approve the Planned Unit Development as presented by the Agent in the October 24, 2005, letter and include the 150-foot monopole tower.

DUNLAP moved, **ALDRICH** seconded.

HENTZEN In your motion are you suggesting that all the conditions in the staff report be included or that some of them be eliminated.

DUNLAP I was suggesting in my motion as requested by the applicant.

HENTZEN Let's specify that. When they asked the agent when it came to number five his answer was no, when he came to number seven the answer was no.

DUNLAP Those are restriction that the staff put on and I am saying that I do not agree with those restrictions.

HENTZEN That is what I am asking you.

DUNLAP My motion is to approve as applied by the applicant and not with the restrictions applied by staff.

HENTZEN I would appreciate if we could say no to number seven and number nine.

LONGNECKER Mr. Hentzen may I interject? In your packet there is a letter dated October 24th, 2005, letter and I believe that is what Mr. Dunlap is referring to when he says as requested by the applicant.

DUNLAP Which I see as no change of what we have today except for the addition of the altitude on the tower.

HENTZEN What is the zoning on the property?

DUNLAP It is SF-5 with a Conditional Use.

MILLER It is "SF-5" with a Conditional Use today. If you approve what the applicant is proposing it will become the Kirk Planned Unit Development subject to the conditions that are in the October 24, 2005, letter recommended by Tim.

LONGNECKER The applicant has turned in a site plan, which has provisions on the PUD, which I don't think conflict with what he has with the October 24th letter.

JOHNSON If this ground is not platted basically there will be no permits to be issued for any constructions?

LONGNECKER Correct, to get a building permit you would have to plat the property. At the time of platting drainage will be addressed.

JOHNSON I don't know what he is accomplishing if we don't plat it. They don't want to plat.

MILLER Essentially if you approve it the way he has recommended you would approve the PUD. They would not be required to plat in order to have the PUD go into effect, but under the Subdivision Regulations at the time that he came for a building permit then he would have to plat at that point.

JOHNSON I will support the motion.

DUNLAP Which would include drainage?

MILLER Yes, the plat would include a drainage review.

LONGNECKER Are we going to include the site plan as presented in the approval, because we have provisions in the site plan which I feel need to be recognized if it is part of the approval process and that includes the platting and drainage question.

DUNLAP Yes we will include the site plan as presented.

MOTION carried 9-0.

MAPC DEFERRED NOVEMBER 3, 2005

5. **Case No.: CON2005-47** – Huntleigh, LLC, c/o Jay W. Russell Request Conditional Use to permit a neighborhood swimming pool on property zoned "SF-5" Single-family Residential on property described as;

Lot 18, Block A, Ridge Addition, Wichita, Sedgwick County, Kansas. Generally located 1/6 mile north of 37th Street and 1/2 mile west of Ridge Road (intersection of Lakecrest and Havenhurst).

BACKGROUND: The applicant requests a Conditional Use to permit a neighborhood swimming pool on a platted lots within the Ridge Addition. The site is located at the southwest corner of Lakecrest and Havenhurst. The property is zoned "SF-5" Single-Family Residential and is currently undeveloped; the Unified Zoning Code (UZC) requires a Conditional Use for neighborhood pools in SF-5 zoning. The character of the surrounding area is that of a developing single-family residential neighborhood. All surrounding property is zoned "SF-5" Single Family residential and is being developed with single-family residences.

The attached site plan shows a fenced 16 by 32-foot swimming pool, an equipment/bath house, a playground, and six parking spaces (to include one ADA space) on the lot. The site plan demonstrates landscaped screening and parking lot screening; an approved landscape plan would be required for this proposal.

CASE HISTORY: The subject property is platted as Lot 18 of the Ridge Addition, recorded in 2004.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family residential development
SOUTH: "SF-5" Single-family residential development
EAST: "SF-5" Single-family residential development
WEST: "SF-5" Single-family residential development

PUBLIC SERVICES: The subject property has access to Havenhurst, a two-lane residential street. Water, sewer, and other municipal services are available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Urban Residential" development. This residential category provides for the lowest density of urban residential land use and consists of residential, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool and playground is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan.

RECOMMENDATION: No members of the public have contacted staff regarding this request. Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The subject property shall be developed in accordance with the regulations of the Landscape Ordinance per an approved landscape plan.
3. Outdoor lighting shall be limited to 14 feet in height, and shall be shielded downward and away from all neighboring properties.
4. Development and use of the subject property for a neighborhood swimming pool and playground shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
5. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is that of a developing single-family residential neighborhood within "SF-5" Single-Family Residential zoning. A neighborhood swimming pool is accessory to and customarily associated with the zoning, uses, and character of a low-density residential area.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: Locating a neighborhood swimming pool within a residential development will introduce more traffic and noise for the nearby residential properties. The recommended conditions of approval pertaining to screening, lighting, and landscaping should mitigate these potential problems.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Functional Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Urban Residential" development. This residential category provides for the lowest density of urban residential land use and consists of residential development, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool and playground is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan.
4. Impact of the proposed development on community facilities: The proposed swimming pool will increase trips to the site, but the impact should not exceed the capacity of the street. Many neighbors will have easy pedestrian access to the site because of its location.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (9-0).

6. **Case No.: ZON2005-47** – Quentin & Sonya Moeder Request Sedgwick County Zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on property described as;

Beginning 560 feet South of the Northeast corner of Government Lot 1; thence South 140 feet; thence West 311.14 feet; thence North 140 feet; thence East 311.14 feet to the point of beginning except the East 30 feet for road all in the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas.
Generally located South of 45th Street North and west of Hoover (4515 N. Hoover).

BACKGROUND: The applicants own 2.67-acres located south of 45th Street North and on the west side of Hoover Road. Their property is located in an unincorporated part of Sedgwick County, but in the Wichita 2030 growth area. Their property is zoned "LC" Limited Commercial, except for the south 0.9-acres of it (the subject site), which is zoned "SF-20" Single-family Residential. The

applicants are requesting "LC" zoning on this south 0.9-acres of their property to have all their property under the same "LC" zoning. The applicants' property is developed with a single-family residence on it, which appears to have been built in 1948.

Approximately 7-8-acres of "LC" zoning is located on each of the four corners of the Hoover Road – 45th Street North intersection and none of that acreage is commercially developed. With the exception of the applicants' property these intersection properties are either agricultural fields or not developed. The character of the area beyond the intersection's "LC" node is agricultural with scattered large tract residential (all zoned "SF-20") to the south, west and north of the subject site. East and northeast of the site, across Hoover Road and in the city limits of Wichita, is 460-acres owned by the city of Wichita. Conditional Use, CON2004-45, covers this City owned property (zoned "SF-5") and allows for 20-years of sand and gravel excavation, with possible future uses including recreation and a public park. The site is approximately ½ mile north of State Highway K-96, but Hoover Road has no access off or onto K-96.

CASE HISTORY: The site is not platted. In 1958 the Board of County Commissions (BoCC) approved the Official Zone Map of Sedgwick County, Kansas. On this map all four corners (approximately 7-8-acres on each corner) of the 45th Street North – Hoover Road intersection was identified as being zoned "LC" Light Commercial. Most of the applicants' property is in the southern portion of the 1958 "LC" zoned southwest corner of that intersection. On the 1958 zoning map the south 0.9-acres of the applicants' property (the subject site) was identified as being zoned "R-1". On March 25, 1996, as approved by the City Council and BoCC, the zoning district names and map code designations for Wichita and Sedgwick County converted the "LC" Light Commercial district to "LC" Limited Commercial and the "R-1" Suburban Residential district to "SF-20" Single-family Residential. The size and configuration of the commercial zoning on the four corners of the 45th Street North – Hoover Road intersection remains unchanged from the 1958 zoning map to the present.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Limited Commercial	Single-family residence	agricultural fields
SOUTH: "SF-20" Single-family Residential	Single-family residence	agricultural fields
EAST: "SF-5" Single-family Residential	Undeveloped	
WEST: "SF-20" Single-family Residential	Single-family residence	agricultural fields

PUBLIC SERVICES: Hoover Road is a two-lane, paved Sedgwick County highway at this location. 45th Street North is a dirt, Park Township road at this location. 45th Street North does not go east beyond its intersection with Hoover. The 2030 Transportation Plan of the Wichita/Sedgwick County Comprehensive Plan indicates no change to the current status of these roads. No projects exist in the CIP for these roads. There are no traffic counts at this intersection. City water and sewer are not available on the site. The site is outside any Rural Water districts.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" identifies the application area as appropriate for "employment/industry center" development. The Guide suggests "concentrations of employment of industrial, manufacturing, service or non-institutional nature", with the range of uses including "manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices" as appropriate development. The applicants' requested "LC" zoning for their site seems appropriate as considered within the Guide's recommended "employment/industry center" development for this area, which stretches from Ridge Road to Hoover Road and from 45th Street North to K-96.

RECOMMENDATION: The requested "LC" zoning does not significantly add to the noncommercial zoning in the area and brings the applicants' property into one zoning district. Based on these factors, plus the information available prior to the public hearing, Staff recommends the requested "LC" zoning be APPROVED subject to platting within a year:

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is predominately zoned "SF-20" and with scattered large tract single-family residences, agricultural fields and undeveloped land owned by the city of Wichita. CON2004-45 allows for excavation of sand and gravel on the city property for the next 20 years with possible future recreational uses and parks. The 45th Street North – Hoover Road intersection has had its four corners commercially zoned since 1958, but no commercial development has ever occurred at the intersection. 45th Street North is a dirt township road, that serves local residential traffic and there are no scheduled change in its status. Hoover Road is a paved two lane county highway with no access onto K-96, a ½ mile south of the site. There is no city water or sewer available to the area. All things considered, it would seem that the area would continue to experience slow development.
2. The suitability of the subject property for the uses to which it has been restricted: The site exceeds the minimum lot size and configuration requirements for the "SF-20" zoning district and could be developed as a single-family residence. A lack of public services, limited access to major arterials and generally a lack of development in the area, make large commercial development at his intersection somewhat unlikely at this time.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The expansion of the "LC" at this site to an additional 0.9-acres will have a minimal if any affect on the area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide identifies the site as appropriate for "employment/industry center" development. The proposed rezoning of 0.9-acres of "SF-20" zoning to "LC" would seem to be in accordance to the Comprehensive Plan.
5. Impact of the proposed development on community facilities: The proposed zoning will not impact community faculties, as public water and sewer are not available and such a small area adding to the existing commercial zoning will not affect traffic.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (9-0).

7. **Case No.: CUP2005-55 DP104 Amendment #2** – Lake Ridge Development, c/o Larry Bottenberg; Schrader Bros. Construction, c/o Bill Schrader; and AIS, LLC (owners); Poe & Associates, c/o Tim Austin (agent) Request Amendment to Oak Cliff Estates Community Unit Plan on property described as;

Parcel 1: The north 339.5 feet of the west 178 feet of Lot 3, Block 20, Oak Cliff Estates Addition, Wichita, Sedgwick County, Kansas.

Parcel 2: Lot 3, Block 20, Oak Cliff Estates Addition, Wichita, Sedgwick County, Kansas; EXCEPT, the east 245 feet of the south 163 feet of said Lot 3 and EXCEPT the north 127 feet of the south 290 feet of the east 75 feet and EXCEPT the south 225.5 feet of the west 178 feet of said Lot 3 and EXCEPT the south 225.5 feet of the east 111.75 feet of the west 289.75 feet of Lot 3, Oak Cliff Estates Addition, Wichita, Sedgwick County, Kansas.

Parcel 3: Lot 1, Block 1, Oak Cliff Estates 4th Addition, Wichita, Sedgwick County, Kansas EXCEPT the east 215 feet of said Lot 1. Generally located on the northwest corner of Maize Road and Maple.

BACKGROUND: The applicant is requesting to amend the screening wall requirements for DP-104 Oak Cliff Estates Community Unit Plan. The property is zoned "LC" Limited Commercial. The amendment would shift the screening wall requirement on the north and west property line of Parcels 2 and 3 to the western property line of Parcels 7 and 8 with Parcel 2. The request is based on the premise that the property will be developed with multi-family use. Specific plans have not been submitted for the proposed multi-family use. Preliminary discussions included possible garden apartments and row house types of structures.

The current use provisions for the parcels are: "Proposed Uses: shopping center, and associated tire, battery and accessory establishment, financial, office, personal services, convenience and service establishments".

The current screening requirements are a solid or semi-solid screening wall consisting of brick, stone, masonry, architectural tile or other similar material with a height between five and eight feet on the north and west property line. Additionally, the construction of the masonry-type screening wall was required to be installed along the northern boundary at the time of development of Parcel 7 (administrative adjustment on June 27, 2003) in order to protect the views of the duplexes to the north. However, during the time when the car wash was being constructed, the discussions began on possible use of the interior site for residential use. It was suggested that shifting the masonry-type wall to the west side of Parcel 7 and Parcel 8 would achieve more effective buffering of commercial activity from residential use.

The agent has sought to eliminate the screening wall requirement by administrative adjustment, but this was deemed to be beyond the scope of administrative authority and was not granted. A letter of credit for the portion of the screening wall north of the car wash was posted when the car wash was developed on Parcel 7. The city has initiated the process of invoking the letter of credit to install the wall, but this action was placed on hold pending the outcome of this amendment.

The "LC" property in the CUP is developed with a convenience store (and associated car wash) at the intersection, plus a stand-alone car wash on Maize Road, and a bank, a gymnastics club, a retail business (floor tiles), and a day care facility on Maple. Vacant land remains on both street frontages. The "GO" tract on Maize Road is developed with an office. The "MF-29" Multi-family Residential tract within the CUP to the north is developed with duplexes. The property to the west of the CUP is zoned "TF-3" Two-family Residential and is developed with duplexes. The north and west property lines are the common boundary where the solid or semi-solid wall of brick, stone, masonry, architectural tile or other similar material was required. The property to the east of Maize Road consists of offices on property zoned "LC", then a convalescent care facility on property zoned "MF-29" and a country club on property zoned "MF-18" and "SF-5" and a small vacant tract zoned "MF-18". The property to the south is zoned "LC" and developed with a convenience store, a funeral home, a veterinary clinic, a strip commercial center, and a fire station. A single-family residential neighborhood is located south of this commercial development.

CASE HISTORY: DP-104 Oak Cliff Estates was approved July 1, 1980, consisting of four parcels. Of these four parcels, Parcels 1 (1 acre) and 2 (6 acres) had been zoned "LC" as part of the widespread zoning of commercial corners in 1958; Parcel 3 (7 acres) was zoned "LC" and Parcel 4 (10.6 acres) was zoned "R-6" general residence, now "MF-29" Multi-family Residential. Amendment #1 and Z-2465, approved November 2, 1982, rezoned a 0.6-acre tract (Parcel 5) to "GO" General Office and revised the CUP to allow for development of general and professional office or two-family dwellings.

Oak Cliff Estates was recorded August 1, 1980, with a lot configuration matching the four original CUP parcel boundaries. Oak Cliff Estates 2nd Addition, recorded May 15, 1981, subdivided Parcel 4 into duplex lots. Oak Cliff Estates 4th (recorded December 23, 1988) divided Lot 2 of Oak Cliff Estates into three lots but excluded a portion along Maple now developed with Garden Plain State Bank. No parcel boundary adjustments were made to correspond with the new plat boundaries. On February 2, 2002, Parcel 6 was created from Parcel 2 and on June 27, 2003, Parcel 7 was created from Parcel 2. A complete separation of parcels to correspond with ownership, development and platting patterns was processed in 2004, but was placed on extended hold pending resolution of a boundary discrepancy. The adjustment is being finalized and will create Parcels 8-13.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-29"	Duplexes
SOUTH: "LC"	Funeral home, vet, convenience store, strip commercial center, fire station
EAST: "LC"; "MF-18"; "MF-29"	Office, strip commercial, convalescent care facility, country club
WEST: "TF-3"	Duplexes

PUBLIC SERVICES: The site has access to Maple and Maize Road. Both streets are arterial roadways with four through lanes and acceleration or deceleration lanes and center left-turn lanes. Other normal municipal services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide", 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as "local commercial". The classification of local commercial does not include residential use. The current zoning of the tract is "LC", which includes both commercial and a full range of residential uses. The adjoining property is classified as "urban residential", which would include the type of residential use under consideration.

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

A solid screening wall between six and eight feet in height is the standard requirement within community unit plans for separating commercial use from adjoining residential use per UZC Art. III, Section III-C.2(d). Screening requirements in Article IV of the Unified Zoning Code and landscape buffer requirements of the Landscape Ordinance allow for a solid wall or fence, a berm six feet in height or a solid evergreen screen along the common property line between the "LC" zoning and the residential zoning.

As recommended, this amendment would not eliminate the currently required screening wall, but shift the solid wall to the boundary of residential/commercial use on the east side of the development rather than the zoning boundary, and would provide ample landscape buffering.

RECOMMENDATION: The amendment conforms to commercial objectives and locational guidelines of the *Comprehensive Plan* if the property is developed with residential uses. Otherwise, removal of the wall requirement lessens the site design features protecting the adjoining residential neighbors, and the wall locations should be maintained in its current configuration. The recommended conditions are intended to ensure the wall is constructed in the location that represents the developed boundary between residential (including multi-family residential) and commercial use.

Based on the information available prior to the public hearing, staff recommends the amendment be APPROVED subject to the following conditions:

1. If Parcel 2 or Parcel 3, separately, or Parcel 2 and 3, combined, are developed with residential use, a solid evergreen buffer with solid screening effect to be achieved within three growing seasons and minimum height of 5-6 feet at installation may be installed in lieu of standard CUP requirement of a solid or semi-solid wall of brick, stone, masonry, architectural tile or other similar material plus a landscape buffer of one shade tree or equivalent every 40 feet along the north property line of Parcel 2 and Parcel 3 and a the west property line of Parcel 3. The screening shall be installed for the entire length of the entire parcel(s) being developed prior to issuance of a Certificate of Occupancy, and a Landscape Plan shall be approved in compliance with these requirements prior to the issuance of a building permit.
2. If Parcel 2 or Parcel 3, separately, or Parcel 2 and 3, combined, are developed with commercial use, the screening requirement shall be the standard UZC requirement for CUPs per UZC Art. III, Section III-C.2(d) AND the standard commercial/residential buffer requirements of the Landscape Ordinance.
3. Add the following uses to Parcel 2 and Parcel 3: Multi-family use pursuant to the property development standards of the "MF-29" Multi-family Residential Zoning District.
4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
5. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
6. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by MAPC, or the Governing Body, if required, or the request shall be considered denied and closed. The revised copies of the CUP shall amend those sections of Parcel Descriptions and General Provision #7 altered by this amendment and shall be revised to include all previously granted adjustments.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The "LC" property in the CUP is developed with a convenience store (and associated car wash) at the intersection, plus a stand-alone car wash on Maize Road, and a bank, a gymnastics club, a retail business (floor tiles), and a day care facility on Maple. Vacant land remains on both street frontages. The "GO" tract on Maize Road is developed with an office. The "MF-29" Multi-family Residential tract within the CUP to the north is developed with duplexes. The property to the west of the CUP is zoned "TF-3" Two-family Residential and is developed with duplexes. The north and west property lines are the common boundary where the solid or semi-solid wall of brick, stone, masonry, architectural tile or other similar material was required. The property to the east of Maize Road consists of offices on property zoned "LC", then a convalescent care facility on property zoned "MF-29" and a country club on property zoned "MF-18" and "SF-5" and a small vacant tract zoned "MF-18". The property to the south is zoned "LC" and developed with a convenience store, a funeral home, a veterinary clinic, a strip commercial center, and a fire station. A single-family residential neighborhood is located south of this commercial development.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed in conformance to the existing CUP restrictions. It has remained vacant most likely because of the piecemeal fashion in which it has been developed over a 25-year period that has left the interior portion of the CUP as a residual less attractive for commercial use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The removal of the restriction would permit solid evergreen screening in lieu of a wall constructed of brick, stone, masonry, architectural tile or other similar material between the multi-family use on the apartments and the duplexes to the north.
4. Length of time the subject property has remained vacant as currently zoned: 25 years.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide", 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as "local commercial". The classification of local commercial does not include residential use. The current zoning of the tract is "LC", which includes both commercial and a full range of residential uses. The adjoining property is classified as "urban residential", which would include the type of residential use under consideration. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. A solid screening wall between six and eight feet in height is the standard requirement within community unit plans for separating commercial use from adjoining residential use per UZC Art. III, Section III-C.2(d). Screening requirements in Article IV of the Unified Zoning Code and landscape buffer requirements of the Landscape Ordinance allow for a solid wall or fence, a berm six feet in height or a solid evergreen screen along the common property line between the "LC" zoning and the residential zoning. As recommended, this amendment would not eliminate the currently required screening wall, but shift the solid wall to the boundary of residential/commercial use on the east side of the development rather than the zoning boundary, and would provide ample landscape buffering.
6. Impact of the proposed development on community facilities: No significant impact.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (9-0).

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8. **Case No.: DR2004-10** - Request Amendment to Subdivision Regulations relating to The Wichita Sedgwick County Subdivision Regulations to add provisions regarding public utility easements associated with lot splits and vacations

NEIL STRAHL Planning staff presented report.

The Subdivision Committee recommended the approval of **Option 1A** as described below. An associated Ordinance and Resolution have been attached.

Memo dated June 21, 2005 -- This memo addresses a subdivision amendment proposed by Commissioner M. S. Mitchell. Additional widths for substandard utility easements for existing utilities would be required for all lot split and vacation cases, when all property owners on a block grant similar easement dedications. The memo includes a version revised by Joe Lang denoted as **Option 1A**.

Option 1B -- This proposed amendment has been recommended by the City of Wichita Water and Sewer Department, and the local utility companies. Additional widths for substandard utility easements would be required for all lot split and vacation cases in accordance with the current staff policy.

Currently additional easements are required across the board with approval of lot splits or vacation cases, and the opposition to the current policy is based on a situation where no additional utility installation is planned. You have reviewed this issue earlier in the year, at which time the matter was sent back to the Subdivision Committee for further review, and the Subdivision Committee recommended the adoption of Option 1A, which is included in your packet. The City Legal Department also has refined the language in this proposed amendment, and the amendment would require additional easements for substandard utility easements when all property owners adjoining the easement would grant similar dedications. Additional easements would also be needed if specifically required by MAPC.

As to how the amendment would be implemented, it would be the responsibility of the Department requesting the additional easement, whether that be the Engineering Department, or Water & Sewer Department, Westar Energy, or SBC to obtain the additional dedications from the adjoining owners within the block containing the easement. Those dedications would be forwarded to MAPD for processing with the lot split or vacation cases. In lieu of obtaining the additional dedications from the adjoining owners another alternative outlined in the amendment would be reviewed by MAPC who is granted the authority to require additional easement.

Now for vacation cases, which are currently considered by MAPC, additional easements are merely another issue to be reviewed, and this type of review has occurred in the past. However, lot splits are now reviewed administratively, so for this alternative an MAPC Agenda Item would need to be scheduled to review the need for additional easements for lot splits.

We have also included Option 1B in your packet, that should be the last page for Item 8, and that Option has been recommended by the Water & Sewer Department, along with the local utility companies, although that Option was not recommended by the Subdivision Committee. This option is a codification of existing staff policy where the additional widths for substandard utility easements would be required for all lot splits and vacation cases.

WARNER Do I understand you, that on the first Option where you need the adjacent properties to agree to this, that will be initiated by one of the utilities requesting the easement?

STRAHL That is correct.

WARNER If they don't do that, it doesn't happen?

STRAHL No, it could still go to the MAPC for your review.

MITCHELL I drafted what has become Option 1A, the City Attorney's office modified that, and I agreed to the language, so I am in support of the way that Option 1A is written, the way that you have it now; it accomplishes the same thing.

WARNER Tell us what it accomplishes.

MITCHELL It accomplishes not taking additional easements from property owners who need no additional utilities in the easement simply because either a vacation or lot split is being requested. If any additional utility would be required, based on my application, there has never been a question about changing the easement to the full twenty foot width or as much as could be obtained for the applicant. It is only where no new utilities services are being planned.

DAVID WARREN, WATER AND SEWER DEPARTMENT DIRECTOR for the CITY OF WICHITA Although the issue of additional new utilities has come up in Mr. Mitchell's comments, that is not the primary concern of the utility system or of the other utilities. Our primary concern here is that with these substandard easements, many of these were granted in the period of time prior to modern construction technologies, and also prior to the time when there were in place standards for safety that require in today's world a wider utility easement, especially for any kind of excavation.

We believe that it is appropriate to require these on a lot split, not for the purposes of putting additional utilities in place, but for the protection of the people who will carry out the work, and for the room that is needed to actual carry out the work using modern construction technologies, and the equipment that we require. We don't believe this places an unreasonable burden on the property owner. We believe that it is appropriate if there are concerns about the property owner being affected by any encroachments that they may have on the additional easement.

I would not have a problem with granting that property an encroachment subject to whatever work may have to be done in the future, at which time the utilities would then work with the property owner to correct the encroachment, but they would not be required to move anything out of the expanded easement until such time as the utility had to get in there to do the work that was needed. Our main concern and issue here is being able to access our existing infrastructure and do the repairs or replacement that may be required of them in the future.

HENTZEN Mr. Warren, do you support Option 1A?

WARREN No, I support Option 1B.

MITCHELL When this issue was presented earlier, what I asked was if the additional width is needed just for lot splits and vacation cases in small incremental sections, why wouldn't it be good for the city to go ahead and by some kind of city action widen all 16 foot utility easements to 20 feet? Because what you are saying is if there is a 100 foot section that has 20 feet or even 10 feet as their half you are not going to be able to dig up that section any differently then you would be able to dig up the adjacent one. So if your argument is good, it is good everywhere. The City Attorney has advised that there is no way that the City can acquire those additional rights other then through the permission of the owner and that apparently no one is willing to go to all those 16 foot utility owners and ask for an additional dedication. I don't see how getting incremental 100 foot at a time, 200 feet at a time, on one side and then the other satisfies your concern.

WARREN I think it is always better Mr. Mitchell if the utilities can acquire additional easement in any area. None of us can predict where the need for a repair might occur, and the fact that we have got it on one lot or at some point in the future a repair may have to occur, puts us that much ahead with regard for that repair. I don't take issue with your comment about the City approaching property owners where we have less then adequate easements about obtaining additional easements, and certainly that would be something that I would be more then willing for us to begin to look at in the future. But I think we have an issue before us now, where we have an opportunity on an incremental basis to get relief on properties as they come up one at a time. I don't think that is a replacement for us going out and trying to obtain additional easements from other properties in the future though.

MITCHELL As of now, no one is making the attempt to obtain the balance of that block or a single lot action, what I am suggesting, is that it is time for you to do it.

WARREN What is contained in Option 1A as being an unnecessary restraint on us being able to obtain additional easements through the process of lot splits, and the abandonment type of processes that comes before this Board routinely.

BICKLEY FOSTER Back in 1960's I was Director of Planning for five years, and Mr. Mitchell had his office right next to mine. At that time we had 16-18 foot easements, and it was suggested back then that if we had a 20-foot easement we would save money. At that time OSHA was involved in terms of safety for employees, and KG & E began to put electric lines underground. The 20-foot easement was taken to the MAPC, and both governing bodies, and was approved. The 20-foot easement is a standard in the State of Kansas. I feel this proposal would be a step backwards. I have been with neighbors and asked for dedications, and it is nearly impossible. I would ask you to approve the proposal in Option 1B.

MITCHELL I do agree with Mr. Foster on the 20-foot easement. My proposal is that where a single lot has made an application, rather than taking that small increment by itself, that the utility be asked to go out and try to obtain easement through the rest of that block, and if there is sufficient reason why that should be done that the MAPC can make that requirement. My aim is to get the 20-foot easement uniform rather than piece meal one or two lots at a time.

FOSTER I see your point, but I don't think it is going to happen. I don't think these people are going to go out and ask their neighbors to do it, and I don't see the City staff having any extra time to go out and do it. If I came in to get a permit, to build something on a vacant lot, you now require me to add 5-10 feet to the right-of-way. Is that the next thing are we going to say that anybody who wants to add 5-10 feet to 100 foot right-of-way should they come back in and go the whole block to their neighbors, and have them dedicate 5-10 feet? Maybe the idea of getting together a program to go out and do it would be much more useful, and I would support that idea but have a person who wants one lot done to do that is not practical as I see it.

ALDRICH I have a question. The approval of Option 1B would mean that there would be a utility easement on that property even though there was not physically any utilities on that property correct?

FOSTER Conceivably, you need to get those right-of-ways when you can. I think this is a step back.

HENTZEN Many times when people come in here for a building permit, or a zone change or something, we have been able to propose a dedication off the front of their property for nothing, now they might get one in the middle of the block, and get some dedication for some future use but you are saying that is not a good idea?

FOSTER A easement is a dedication, just as well as a right-of-way on the front, and I was just illustrating would you apply the same thing to the frontage, and not require people to pickup frontage for the entire block. What I am saying is that it is a nice idea but it doesn't work.

SCHLEGEL This isn't going to require easements where utilities are not going to be located. The way that this is written in both options is that the easements are required where utilities are proposed. The question that we are dealing with here is what do we do about what is considered by today's standards to be substandard easement that are on old plats.

DUNLAP I can appreciate the requirement to get equipment in, but I do not appreciate the requirement that we transfer control of property simply because we want to do something else, so I can't support Option 1B at all.

WARNER Do I understand correctly that the applicant will go to get the petition of the others or is it the utilities?

MITCHELL The way that it is written, it is the utilities.

WARNER So I come in to get a lot split or whatever, and they require that we have a dedicated another 4-5 feet utility easement, it would be the utilities responsibility to hit the neighbors?

MITCHELL Yes.

WARNER I don't think that will change anything other than that will cost the utility some time, and money because they will not get the neighbors to agree.

MITCHELL If they think they need it, they ought to ask for it.

DUNLAP We could wind up here with a lot split creating an easement on two adjacent properties and never, get the ones next door.

WARNER And this says that if the utilities proceed with this and don't get the dedication that the applicant is not required to dedicate the extra 4-5 feet.

MITCHELL Unless the MAPC decides differently.

MOTION: To approve subject to the Subdivision Committee Recommendations and approve Option 1A.

MITCHELL moved, **ANDERSON** seconded the motion, and it carried (8-1).

(HILLMAN, opposed)

9. **Floodplain Management Task Force Draft Report and Recommendations, presentation by Christy Askew, Associate Planner, Advance Plans Division.**

CHRISTY ASKEW

I'd like to recognize people in audience David Spears, Director of Public Works, James Weber, Deputy Director of Public Works, Irene Hart Director of Community Development, Mitch Mitchell and John Schlegel, Director of Planning Department served on this task force.



Floodplain MTF
Recommendations...

ALDRICH You have identified funding sources but do you have any idea on the estimated cost?

ASKEW Yes, and no. That was discussed depending on the initiative, what we are hoping to do is to develop as a part of the organizing committees task is to further identify those cost with specific projects. That would be included in a three-year business plan for that district but there are some costs associated. There is grant money available for acquiring flood prone properties as far as the drainage manual being created we are hoping that would be done by local engineers on a voluntarily basis as well as the policy.

The Metropolitan Area Planning Department informally adjourned at 3:57 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2005.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)